Claims 1-8

First, claim 1 explicitly requires "storing, in each individual member's communication device, status information concerning each other member of said affinity group...when the status of any member...changes, sending a status update message...to said each other member... receiving said status update messages concerning each other member...at said each other member's...device [and] updating said status information in said each other member's...device when said status update message concerning said any member is received." Thus, as stated in Applicant's last Response dated October 11, 2002, communications between members of an affinity group are reciprocal. That is, whenever the status of one member in an affinity group changes, *each* of the other members of the infinity group is notified.

The Examiner contends that both the peer-to-peer networks of Borgstahl and the TDMA/CDMA/FDMA networks of Rosenberg teach "full-duplex" communications between endpoints. Applicant readily agrees that many communications networks are capable of full-duplex (i.e., two-way) communications. Respectfully, however, this contention incorrectly equates full-duplex communications with the reciprocity of the communication of status information between affinity members as required by claim 1, when in fact, they are two vastly different and unrelated concepts.

Full-duplex communications simply means that one user can have a conversation with another user. It says nothing about the ability of one affinity group member to update each of the other affinity group members when his/her status changes. That is, merely because users A and B can converse in a full-duplex mode does not mean that users A and B are updated whenever the status of user C changes, nor does it say anything about updating users A and C whenever the status of user B changes (and likewise, for user C). The fact that TDMA/CDMA/FDMA and peer-to-peer networks are full-duplex systems means nothing with respect to the reciprocity of the communication of status information between affinity members

as required by claim 1. Accordingly, Applicant disagrees with the Examiner's view and reiterates the remarks made in the last Response dated October 11, 2002.

Second, neither Borgstahl nor Rosenberg teaches the requisite "storing, in each individual members' communication device, status information concerning each other member of said affinity group." A close reading of the Borgstahl disclosure reveals that the disclosed memory (reference #42 in Fig. 2) stores executable programs, personalization data, and application data (i.e., data used by the applications). The personalization data disclosed by Borgstahl are ID codes, passwords, PINs, radio or TV channel presets, language preferences, and speed dial telephone numbers, while the application data are facsimile numbers, scanned data (e.g., using a bar code reader), telephone numbers received via pager, and sound snippets (see Borgstahl, p. 7, line 32 – p. 8, line 7). Plainly, none of the disclosed data stored in the memory of Borgstahl has anything to do with the status information of the member that owns the device, let alone the status information of *any* of the other group members. Although the Examiner assumes that the disclosed memory can be used to store the status of each of the other affinity group members, the Borgstahl patent is conspicuously devoid of any evidence whatsoever that supports this theory. A thorough reading reveals that Borgstahl *never* teaches or suggests using the disclosed memory as required by claim 1. Simply because the Examiner believes that Borgstahl's memory might theoretically be used to store status information does not mean that it does store status information, nor does it mean that the cited art teaches that use. Certainly, Borgstahl never even suggests using the memory to store status data. As such, where does the Examiner obtain support for the theory? It appears as if the rejection is based on nothing more than an unsupported assumption, and this is never allowed (*In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). If the Examiner disagrees, Applicant respectfully requests proof from the Examiner that Borgstahl teaches using the disclosed memory to store status information as required by claim 1.

The Rosenberg reference does nothing to rectify this deficiency of Borgstahl, and the Examiner never asserts that it does. Any data in Rosenberg is actually stored in memory on the servers, not the individual devices as required by claim 1. Considering the cost of resources associated with individual devices (e.g., physical space constraints, amount of memory, etc.), storing data on servers having cheaper, more plentiful resources actually *teaches away* from storing data on individual devices. As such, not only does Rosenberg not teach the requisite "storing" step of claim 1, it teaches away, and is therefore improper for use in the §103 rejection.

Finally, the above facts notwithstanding, even if the art cited by the Examiner taught each of the claim 1 elements (which they do not, alone or in combination), the §103 rejection would still fail because the Examiner has failed to put forth a *legally sufficient* motivation to combine the references. Specifically, the Examiner asserts on page 4 of the Office Action that "It would have been obvious...to modify Borgstahl, such that an affinity group is used and a status message is sent when changed, to provide each wireless member with up-to-date information about the network for ease of use." After closely reading both the Borgstahl and the Rosenberg references, however, Applicant has failed to locate any passage that supports such a theory. Indeed, both the Borgstahl and Rosenberg documents are conspicuously devoid of any indication that would support, explicitly or implicitly, using status messages to provide "each wireless member with up-to-date information about the network for ease of use." As such, it appears as if the motivation to combine the references is supported on nothing more than mere speculation and unsupported facts. Should the Examiner choose to disagree, however, Applicant respectfully requests that the Examiner provide proof that the proffered motivation enjoys support in the evidence of record, for example, a citation within the cited art.

Therefore, the §103 rejection to claim 1 necessarily fails for at least three reasons: First, the Examiner's theory that equates full-duplex communications with the requisite reciprocal communications is fundamentally unsound, and neither reference teaches or suggests this claimed aspect. Second, neither Borgstahl nor Rosenberg teach or suggest the claimed

"storing" step, and in fact, Rosenberg actually *teaches away*. As such, Rosenberg is improper for use as a reference in any rejection. Third, the motivation to combine the references is based on nothing more than unsupported speculation, as none of the cited art contains support for making the proposed combination. Accordingly, neither Borgstahl nor Rosenberg, alone or in combination, teach or suggest claim 1. As such, Applicant respectfully requests the allowance of claim 1, and its dependent claims 2-8.

Claims 10-18

The Examiner also maintained the rejection to claim 10, citing similar reasoning as in the rejection of claim 1, and re-stating the same motivation. However, like claim 1, claim 10 requires the reciprocity in communications between peers, and also requires "storing member status information data in each mobile communication device used by said members." Thus, for reasons similar to those stated above with respect to claim 1, neither Borgstahl nor Rosenberg teach or suggest, alone or in combination, claim 10. Applicant therefore respectfully requests the allowance of claim 10, and its dependent claims 11-18.

Claims 19-25

The Examiner, for reasons similar to that of claim 1, has also maintained the rejection to claim 19, which is directed to an apparatus for performing the methods described above. Like claims 1 and 10, claim 19 requires the reciprocal flow of the status updates according to the invention, and memory to store status information. As stated above, neither Borgstahl nor Rosenberg teaches or suggests these claimed aspects. Moreover, nothing in either reference teaches or suggests a processor "for writing status information to and reading status information from said memory [and] programmed to...generate a status update message when said member's status changes for transmission...to each other member of said affinity group...and...update said status information stored in said memory when a status update

message is received from another member of said affinity group." Therefore, for reasons similar to those stated above with respect to claim 1, the cited art fails to teach or suggest, alone or in combination, the subject matter of Applicant's claim 19. Accordingly, Applicant respectfully requests the allowance of claim 19, and its dependent claims 20-25.

Respectfully submitted,
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CERTIFICATE OF FACSIMILE TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FACSIMILE TRANSMITTED TO THE UNITED STATES PATENT AND TRADEMARK OFFICE, FAX NO: (703) 872-9314 ON JANUARY 13, 2003.

TYPED OR PRINTED NAME OF PERSON SIGNING THIS CERTIFICATE:

STEPHEN A. HERRERA

SIGNATURE: _____